



DEPARTMENT OF HOMELAND SECURITY

6 CFR Chapter I

49 CFR Chapter XII

[DHS Docket No. DHS-2021-0018]

Ratification of Security Directives and Emergency Amendment

AGENCY: Office of Strategy, Policy, and Plans, Department of Homeland Security (DHS).

ACTION: Notification of ratification of directives and emergency amendment.

SUMMARY: DHS is publishing official notification that the Transportation Security Oversight Board (TSOB) has ratified Transportation Security Administration (TSA) aviation security directives (SDs) applicable to airport and aircraft operators and an emergency amendment (EA) applicable to foreign air carriers requiring mask wearing at airports and onboard commercial aircraft to protect the safety and security of the traveling public, transportation workers, and the transportation system from the threat of COVID-19.

DATES: The ratification was executed on April 20, 2021, and took effect on that date.

FOR FURTHER INFORMATION CONTACT: John D. Cohen, DHS Coordinator for Counterterrorism and Assistant Secretary for Counterterrorism and Threat Prevention, DHS Office of Strategy, Policy, and Plans, (202) 282-9708, john.cohen@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Executive Order, DHS Determination, and Centers for Disease Control and Prevention (CDC) Order

On January 21, 2021, in recognition of the continuing threat to health, safety, and economic and national security posed by COVID-19, including the new virus variants, the President issued

Executive Order 13,998, *Promoting COVID-19 Safety in Domestic and International Travel*.¹

The Executive Order directs the Secretary of Homeland Security, in coordination with other federal officials and “through the Administrator of the Transportation Security Administration,” to “immediately take action, to the extent appropriate and consistent with applicable law, to require masks to be worn in compliance with CDC guidelines” in or on airports, commercial aircraft, trains, public maritime vessels, intercity bus services, and all forms of public transportation.² The Executive Order focuses on a nationwide, “whole of government” approach to addressing security and safety concerns presented by the continued transmission of COVID-19 through the transportation system.

On January 27, 2021, the Acting Secretary of Homeland Security issued a *Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System*.³ The Acting Secretary’s determination directs TSA to take actions consistent with its statutory authorities “to implement the Executive Order to promote safety in and secure the transportation system.” In particular, the determination directs TSA to support “the CDC in the enforcement of any orders or other requirements necessary to protect the transportation system, including passengers and employees, from COVID-19 and to mitigate the spread of COVID-19 through the transportation system.”

On January 29, 2021, the Director of the CDC’s Division of Global Migration and Quarantine issued a Notice and Order titled *Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs*.⁴ The CDC Order, effective February 1, 2021, provides that it “shall be enforced by the Transportation Security Administration under

¹ 86 FR 7205 (published Jan. 26, 2021).

² *Id.*

³ Acting Secretary David P. Pekoske, *Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System* (Jan. 27, 2021), *available at* <https://www.dhs.gov/publication/determination-national-emergency-requiring-actions-protect-safety-americans-using-and> (accessed Feb. 22, 2021)

⁴ 86 FR 8025 (Feb. 3, 2021).

appropriate statutory and regulatory authorities” and “further enforced by other federal authorities” as well as “cooperating state and local authorities.”⁵

B. TSA Security Directives 1542-21-01 and 1544-21-02 and Emergency Amendment 1546-21-01

On January 31, 2021, the Senior Official Performing the Duties of the TSA Administrator issued SD 1542-21-01 to airport operators, SD 1544-21-02 to aircraft operators, and EA 1546-21-01 to foreign air carriers requiring mask wearing at airports and onboard commercial aircraft to protect the safety and security of the traveling public, transportation workers, and the transportation system from the threat of COVID-19. The SDs and EA, which are available in the docket for this notice at <https://www.regulations.gov/>, became effective on February 1, 2021, and were scheduled to expire on May 11, 2021. Neither the Acting Secretary’s national emergency determination nor the CDC Order includes an expiration date and they remain in effect based on specific public health conditions and in consideration of the public health emergency.

The SDs and EA implement the Executive Order, the Acting Secretary of Homeland Security’s national emergency determination, and the CDC Order by requiring mask wearing at airports and onboard commercial aircraft. The SDs and EA mandate measures to secure and promote safety in the transportation system, including passengers and employees, by mitigating against the further spread of COVID-19. Under the airport operator SD, covered operators must: (1) make best efforts to provide individuals with prominent and adequate notice of the mask requirement to facilitate awareness and compliance; (2) require individuals to wear a mask; (3) escort individuals from the airport who refuse to comply with the mask requirement; and (4) report incidents of non-compliance to TSA. Under the aircraft operator SD and the EA, covered operators and carriers must: (1) provide prominent and adequate notice of the mask requirement to facilitate awareness and compliance; (2) require individuals to wear a mask; (3) refuse to

⁵ *Id.* at 8030.

board individuals who are not wearing a mask and make best efforts to disembark those who refuse to comply as soon as practicable; and (4) report incidents of non-compliance to TSA. Consistent with the CDC Order, the SDs and EA permit limited exemptions from the requirement to wear a mask in the transportation system, and do not preempt state or local requirements that are the same or more protective of public health than TSA's mandatory measures.

II. TSOB Ratification

TSA has broad authority to issue orders, regulations, and directives related to all forms of transportation (including air transportation), as well as separate authority specific to aviation, including operators of aircrafts and airports.⁶ The TSOB—a body consisting of the heads of various interested Cabinet agencies, or their designees, and a representative of the National Security Council—reviews TSA regulations and security directives consistent with law.⁷ The chairman of the TSOB⁸ convened the Board for review of TSA SDs 1542-21-01 and 1544-21-02 and EA 1546-21-01.⁹

Following its review, on April 20, 2021, the TSOB ratified the SDs and EA. As part of this ratification, the TSOB also ratified any extension of the SDs and EA for a period no longer than the period of time that the Acting Secretary's national emergency determination and the CDC Order remain in effect should the TSA Administrator determine that such an extension is warranted to support implementation of the Executive Order, the national emergency determination, and the CDC order.

The SDs and EA are available in the docket for this notice at <https://www.regulations.gov/>.

⁶ See 49 U.S.C. 114, 44902, and 44903; see 49 CFR 1542.303, 1544.305, and 1546.105.

⁷ See, e.g., 49 U.S.C. 115.

⁸ The Deputy Secretary of Homeland Security serves as chairman of the TSOB. DHS Delegation No. 7071.1, *Delegation to the Deputy Secretary to Chair the Transportation Security Oversight Board* (Apr. 2, 2007). The Deputy Secretary position is currently vacant and the duties of the position, including service as chairman of the TSOB, are being temporarily performed by senior DHS official David P. Pekoske.

⁹ The TSOB previously reviewed and ratified TSA's SD regarding mandatory mask measures in the surface transportation sector. See 86 FR 13971 (published Mar. 12, 2021) regarding notification of TSOB ratification of TSA security directive 1582/84-21-01.

David P. Pekoske

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the Transportation Security Oversight Board*

U.S. Department of Homeland Security.

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